

9.64.090 Violation – Penalty and Civil Remedy

A. Any illegal discrimination specifically addressed by Montana State law shall be submitted to the Montana Department of Labor pursuant to Title 49, Chapters 2 and 3, Montana Code Annotated for processing by the State of Montana.

Pursuant to sections 3-6-103 and 3-11-103 Montana Code Annotated it is intended that violations of sections 9.64.010 through 9.64.080 Missoula Municipal Code not specifically addressed by Montana State law are to be civil municipal ordinance violations intended to be enforceable solely by the complaining person claiming a violation of these sections or their authorized representative through a civil proceeding within the exclusive jurisdiction of the City of Missoula Municipal Court.

[REDACTED]

B. [REDACTED]

[REDACTED], or any other court of competent jurisdiction. Any person claiming a violation of this ordinance must seek such relief within:

- (1) 180 days of the last alleged violation,
- (2) 180 days of the conclusion of a grievance proceeding initiated by the complainant in accordance with a procedure as established by a contract, written rule or policy, or collective bargaining agreement, or
- (3) 300 days of the last alleged violation if a grievance proceeding initiated by the complainant in accordance with a procedure as established by a contract, written rule or policy, or collective bargaining agreement has not been completed within 120 days of initiation of the proceeding.

The initiation of or the granting of relief under a grievance procedure shall not preclude or limit any other claims or remedies available under this chapter. Defendants shall not collect attorney's fees unless the claim is clearly frivolous, unreasonable, or factually groundless, or the claimant continued to litigate after the claim clearly became so.

C. In instances where the City of Missoula Municipal Court has found that the defendant in any civil proceeding pursuant to this chapter has violated a section of the chapter three or more times within a twelve (12) month time period, any Fourth and subsequent violations during any twelve (12) month time period [REDACTED]

[REDACTED] There shall be no imprisonment as a penalty for a violation of this chapter

ANALYSIS

YELLOW: This section of the Missoula Ordinance tells employers, hoteliers, private school boards, gym owners, barbers, etc., that if they violate the provisions of this Ordinance regarding race, color, national origin, religion, creed, sex, age, marital or familial status, or physical or mental disability, then they are subject to the rules and procedures of the Montana Human Rights Act. See pages _____ for an overview of those rules and procedures. In other words, whether employers and other potential violators like it or not, the procedures are known, the Human Rights Bureau is accessible and available, and the entire process has been interpreted and vetted through the court system.

GREEN: Because the Montana Human Rights Act does not include sexual orientation, gender identity, or gender expression as protected classes, the well-known, vetted procedures of the Montana Human Rights Act do not apply for those classes. Therefore, Missoula had to craft a new procedure to cover these classes. To do so, Missoula gave exclusive jurisdiction over claims of discrimination to the City of Missoula Municipal Court. In a document entitled Frequently Asked Questions, Missoula Anti-Discrimination Ordinance, 4/12/2010, the City of Missoula states in responses to questions 2, 7, and 9, that to have a discrimination claim resolved "individuals will be able to make complaints and engage in a process of fact-finding that would prove or disprove an individual's claim of discrimination." However, no procedures, rules, standards, timelines, or any other boundaries are placed on the Missoula Municipal Court. None of the safeguards of the Montana Human Rights Act are required. Thus employers and others are left to guess at what those standards might be and how the "process of fact-finding" might play out.

_____ This section is quite astounding. In an apparent attempt to put some boundaries on the Missoula Municipal Court, the Ordinance requires the Rules of Civil Procedure apply to claims. _____

_____ Municipal courts are generally bound by the rules applicable to the justice courts and district courts (§25-30-101, MCA) unless specifically stated in the code. _____

GRAY: The gray text contradicts the previous grant of exclusive jurisdiction to the Missoula Municipal Court. By stating that a claimant can file a "petition to . . . any other court of competent jurisdiction," Missoula has suddenly violated the Montana Human Rights Act's limitations on when discrimination claims may be filed in a district court, and has also granted courts other than the Missoula Municipal Court jurisdiction they previously did not have. Missoula does not have this power.

AQUA: This section says that if a claimant uses his employer's grievance procedure and the procedure is successful, the claimant can still file a claim under this section. What incentive would an employer have to work to a grievance resolution if the employer could still be sued ?

_____ This section provides a criminal sanction for 4 or more violations in 12 months. However, it appears to say that once you get your 4th violation, the court can go back to the first three and fine you \$500 for each of the first three also. _____

By pointing out the foregoing, it is my intent to illustrate the problems inherent in allowing a local government to establish its own law in an area where the state law clearly is intended to preempt.

Montana's businesses, non-profits, and other entities are entitled to the predictability that comes with having a single forum for the resolution of discrimination cases. The Montana Supreme Court has agreed. In *Harrison v. Chance*, 224 Mont. 215 (1990), and in subsequent cases, the Montana Supreme Court has held that the "the legislature intended the procedures of the Human Rights Commission provide the exclusive remedy for discrimination in employment."

The Montana Human Rights Act says the same itself. Section 49-2-512, MCA, states as follows:

- (1) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of chapter 3 or this chapter, including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4 of the Montana constitution or 49-1-102. A claim or request for relief based upon the acts may not be entertained by a district court other than by the procedures specified in this part.

It is clear that if a claimant cannot take his claim directly to the district court, then he certainly should not be able to take his claim directly to the municipal court.

ORDINANCE NUMBER 3428

AN ORDINANCE OF THE MISSOULA CITY COUNCIL, AMENDING MISSOULA MUNICIPAL CODE TITLE 9 PUBLIC PEACE, MORALS AND WELFARE TO ADD CHAPTER 9.64 ENTITLED "ILLEGAL DISCRIMINATION" GENERALLY PROHIBITING DISCRIMINATORY PRACTICES IN THE AREAS OF EMPLOYMENT, PUBLIC ACCOMMODATIONS AND HOUSING ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, ANCESTRY, RELIGION, CREED, SEX, AGE, MARITAL OR FAMILIAL STATUS, PHYSICAL OR MENTAL DISABILITY, SEXUAL ORIENTATION, GENDER IDENTITY OR GENDER EXPRESSION; AND AMENDING SECTION 2.94.030 ENTITLED "PERCENT FOR ART PROGRAM ESTABLISHED", SECTION 5.82.080 ENTITLED "NONDISCRIMINATION", SECTION 9.12.010 ENTITLED "HOUSING DISCRIMINATION DECLARED UNLAWFUL" AND SECTION 12.58.100 ENTITLED "EXCEPTIONS".

BE IT ORDAINED BY THE MISSOULA CITY COUNCIL THAT MISSOULA MUNICIPAL CODE TITLE 9, CHAPTER 64, SECTIONS 9.64.010 THROUGH 9.64.090 BE ADDED AND THAT SECTION 2.94.030, SECTION 5.82.080, SECTION 9.12.010, AND SECTION 12.58.100 BE AMENDED AS FOLLOWS:

Title 9.64 Illegal Discrimination

Sections:

9.64.010	Purpose and Intent
9.64.020	Definitions
9.64.030	Employment discrimination prohibited
9.64.040	Discrimination in public accommodations prohibited
9.64.050	Housing discrimination prohibited
9.64.060	Discrimination in educational institutions prohibited
9.64.070	Retaliation prohibited
9.64.080	Posting of notices
9.64.090	Violation – Penalty and Civil Remedy

Section 1

9.64.010 Purpose and Intent. It is the intent of the City of Missoula that no person shall be denied his or her civil rights or be discriminated against based upon his or her actual or perceived race, color, national origin, ancestry, religion, creed, sex, age, marital or familial status, physical or mental disability, sexual orientation, gender identity or expression. The city council declares that such discrimination prohibitions are necessary and desirable for the following reasons:

- A. The city deems it necessary consistent with Montana's illegal discrimination law to identify, protect and safeguard the right and opportunity of all persons to be free from discrimination as identified in Montana's illegal discrimination laws as well as to address and make it illegal to discriminate on the basis of sexual orientation, gender identity or expression.
- B. The city finds that discrimination in the areas of employment, public accommodations and housing is a serious threat to the health, safety, and general welfare of the community. Discrimination creates strife and unrest and deprives the city of its full capacity for economic development by decreasing productivity and increasing demand for city services.
- C. The city has received public testimony and written complaints from citizens reporting instances of discrimination. The city finds that existing state and federal laws regarding discrimination do not adequately address all discriminatory acts reported by the city's diverse residents. The city deems it necessary to adopt local regulations adapted to the needs of its citizens.
- D. Nothing in this chapter is intended to alter or abridge other rights, protections, or privileges secured by state or federal law, including state and federal constitutional protections of freedom of speech and exercise of religion.

Section 2

9.64.020 Definitions. As used in this chapter , unless the context requires otherwise, the following definitions apply:

- (1) "Age" means the length of time from the date of birth.
- (2) "Discrimination," "discriminate" or "discriminatory" means any act, policy, or practice that has the effect of unfavorably subjecting any person to different or separate treatment on the basis of their actual or perceived race, color, national origin, ancestry, religion, creed, sex, age, marital or familial status, physical or mental disability, sexual orientation, gender identity or expression, or because of their association with a person or group of people so identified. Discrimination based on physical or mental disability includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental disability. An accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.
- (3) "Educational institution" means a public or private institution and includes an academy; college; elementary or secondary school; extension course; kindergarten; nursery; school system; university; business, nursing, professional, secretarial, technical, or vocational school; or agent of an educational institution.
- (4) "Employee" means an individual employed by an employer.
- (5) "Employer" means an employer of one or more persons or an agent of the employer but does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to provide accommodations or services that are available on a nonmembership basis.
- (6) "Employment agency" means a person undertaking to procure employees or opportunities to work.
- (7) "Familial status" means having a child or children who live or will live with a person. A distinction based on familial status includes one that is based on the age of a child or children who live or will live with a person.
- (8) "Gender identity or expression" means a gender-related identity expression, or behavior, regardless of the individual's sex at birth.
- (9) "Housing accommodation" means a building or portion of a building, whether constructed or to be constructed, that is or will be used as the home, domicile, residence, or sleeping quarters of its occupants.
- (10) "Labor organization" means an organization or an agent of an organization organized for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms or conditions of employment, or of other mutual aid and protection of employees.
- (11) "Marital status" means being married, never married, divorced, or widowed.
- (12) "Perceived" refers to the perception of the actor, and not to the perception of the person for or against whom the action is taken.
- (13) "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees' associations, employers, employment agencies, organizations, or labor organizations.
- (14) (a) "Physical or mental disability" means:
 - (i) a physical or mental impairment that substantially limits one or more of a person's major life activities;
 - (ii) a record of such an impairment; or
 - (iii) a condition regarded as such an impairment.(b) Discrimination based on, because of, on the basis of, or on the grounds of physical or mental disability includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental disability. An accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.
- (15) (a) "Public accommodation" means a place that caters or offers its services, goods, or facilities to the general public subject only to the conditions and limitations established by law and applicable to all persons. It includes without limitation a public inn, restaurant, eating house, hotel, roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda

fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, barbering, cosmetology, electrolysis, esthetics, or manicuring salon or shop, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, or hospital and all other public amusement and business establishments.

(b) Public accommodation does not include an institution, club, or place of accommodation that proves that it is by its nature distinctly private. An institution, club, or place of accommodation may not be considered by its nature distinctly private if it has more than 100 members, provides regular meal service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business. For the purposes of this subsection (20), any lodge of a recognized national fraternal organization is considered by its nature distinctly private.

Legislative note: Pursuant to subsection 7-1-111(3) MCA the provisions of the ordinance do not apply to or affect "the public school system."

(16) "Sexual orientation" means heterosexuality, bisexuality, or homosexuality.

Section 3

9.64.030 Employment discrimination prohibited.

- A. No employer shall discriminate in the employment, failure to hire, refusal to hire, compensation, work classification, terms, conditions, or privileges of employment, including promotion, demotion, or termination of employment.
- B. No employer shall fail or refuse to refer for employment, or give negative information to a potential employer of an individual, in such a manner that would deprive or limit an individual's employment opportunities or that would otherwise adversely affect an individual's status as an applicant or prospective employee, for a discriminatory reason.
- C. No labor organization shall discriminate in limiting membership, conditions of membership, or termination of membership of any person in any labor union or apprenticeship program.
- D. No employment agency shall discriminate in the procurement or recruitment of any person for possible employment with an employer.

Section 4

9.64.040 Discrimination in public accommodations prohibited. It shall be unlawful for a place of public accommodation to deny, directly or indirectly, any person the full and equal access enjoyment of the goods, services, activities, facilities, privileges, advantages, and accommodations for a discriminatory reason.

Section 5

9.64.050 Housing discrimination prohibited. It is unlawful for any person, owner, manager, employee, or any entity whose business includes engaging in any residential real estate related transactions to discriminate in the sale, lease or rental of any housing facility, or to otherwise discriminate in the terms, conditions, maintenance, improvement or repair of any housing facility. The rental of sleeping rooms in a private residence designed as a single dwelling unit in which the owner also resides is excluded from this section provided that the owner rents no more than three sleeping rooms within the residence.

Section 6

9.64.060 Discrimination in educational institutions prohibited. It shall be unlawful for any educational institution to deny, restrict, abridge or condition the use of, or access to, any educational facilities or services to any person for a discriminatory reason.

Section 7

9.64.070 Retaliation prohibited. No person shall coerce, threaten, discharge, expel, blacklist, or otherwise retaliate against another person for opposing any practices prohibited by this chapter, making a complaint, or assisting in an investigation or proceeding regarding an alleged violation of this chapter; nor

shall any person require, request conspire with, assist, or coerce another person to retaliate against a person for making a complaint or assisting in an investigation or proceeding.

Section 8

9.64.080 Posting of notices. Every employer, business, or entity subject to this chapter shall post in a conspicuous location a notice stating, "Discrimination on the basis of actual or perceived race, color, national origin, ancestry, religion, creed, sex, age, marital or familial status, physical or mental disability, sexual orientation, gender identity or expression is prohibited by the Missoula Municipal Code." Entities subject to this chapter may provide the notice by posting it where employee notices are customarily placed.

Section 9

9.64.090 Violation – Penalty and Civil Remedy.

- A. Any illegal discrimination specifically addressed by Montana State law shall be submitted to the Montana Department of Labor pursuant to Title 49, Chapters 2 and 3, Montana Code Annotated for processing by the State of Montana. Pursuant to sections 3-6-103 and 3-11-103 Montana Code Annotated it is intended that violations of sections 9.64.010 through 9.64.080 Missoula Municipal Code not specifically addressed by Montana State law are to be civil municipal ordinance violations intended to be enforceable solely by the complaining person claiming a violation of these sections or their authorized representative through a civil proceeding within the exclusive jurisdiction of the City of Missoula Municipal Court. The Montana Rules of Civil Procedure shall apply, except and unless the City of Missoula Municipal Court establishes alternative rules of civil procedure for matters within the exclusive jurisdiction of the City of Missoula Municipal Court.
- B. Any person claiming a violation of this chapter may seek remedies, injunctive relief, or other equitable relief by petition to the municipal court, or any other court of competent jurisdiction. Any person claiming a violation of this ordinance must seek such relief within:
- (1) 180 days of the last alleged violation,
 - (2) 180 days of the conclusion of a grievance proceeding initiated by the complainant in accordance with a procedure as established by a contract, written rule or policy, or collective bargaining agreement, or
 - (3) 300 days of the last alleged violation if a grievance proceeding initiated by the complainant in accordance with a procedure as established by a contract, written rule or policy, or collective bargaining agreement has not been completed within 120 days of initiation of the proceeding.

The initiation of or the granting of relief under a grievance procedure shall not preclude or limit any other claims or remedies available under this chapter. Defendants shall not collect attorney's fees unless the claim is clearly frivolous, unreasonable, or factually groundless, or the claimant continued to litigate after the claim clearly became so.

- C. In instances where the City of Missoula Municipal Court has found that the defendant in any civil proceeding pursuant to this chapter has violated a section of the chapter three or more times within a twelve (12) month time period, any Fourth and subsequent violations during any twelve (12) month time period may also be charged and prosecuted as a misdemeanor violation—and may be fined up to five hundred dollars for each violation. There shall be no imprisonment as a penalty for a violation of this chapter

Section 10.

2.94.030 Percent for Art Program established. There is hereby established a Percent for Art Program. The Mayor is responsible for directing the program and shall appoint a Public Art Committee, with the advice of the Public Art Committee and the advice and consent of the City Council, to coordinate and administer the program.

The Percent for Art Program focuses on the outside and the inside of new and remodeled City owned public spaces. The art may serve a function, express a theme, or commemorate an important person. It may underscore or provide a counterpoint to the architecture and surrounding site. It may serve as a landmark that adds definition to the City of Missoula.

- A. The Percent for Art Program requires one percent (1%) of eligible construction costs of City capital improvement projects paid wholly or in part by the City of Missoula to construct or remodel any public or city building, structure, park or any portion thereof to be allocated for public art. No less than eighty percent (80%) of this one percent (1%) will be used for on-site Artwork. No more than twenty percent (20%) will be deposited in a Public Art Trust Fund used to fund additional art projects and provide maintenance for existing works. In cases where the eligible construction costs of a City capital improvement project is less than \$100,000, and at the discretion of the Public Art Committee, a particular piece of on-site art is not required and one hundred percent (100%) of the one percent (1%) may be deposited in the Public Art Trust Fund.

The Percent for Art Program shall be implemented without discrimination based on actual or perceived (as defined in MMC 9.64.020) race, religion, sex, marital or familial status, color, national origin, ancestry, creed, physical or mental disability, age, sexual orientation, or gender identity or expression.

Section 11.

5.82.080 Nondiscrimination.

- A. Services and Facilities Availability. No franchisee shall unlawfully discriminate against any person in the provision of cable television services on the basis of actual or perceived (as defined in MMC 9.64.020) race, color, religion, national origin, ancestry, sex, sexual orientation, or gender identity or expression, age, disability, income or the area in which the person lives. The franchisee shall use best efforts to assure maximum practical availability of the franchisee services and facilities to all subscribers, regardless of disability, including the provision of a remote control device to those subscribers who are mobility limited, or where a member of the subscriber's household is mobility limited.
- B. Hearing Impaired. For hearing impaired customers, the franchisee shall provide information concerning the cost and availability of equipment to facilitate the reception of all basic services, including - but not necessarily limited to - all extended basic tiers, for the hearing impaired.

Section 12.

9.12.010 Housing discrimination declared unlawful.

- A. It is unlawful for any person, owner, manager, employee, or any entity whose business includes engaging in any residential real estate related transactions including but not limited to the sale, lease or rental of any housing accommodation or property to discriminate against any person because of actual or perceived (9.64.020) sex, age, race, physical or mental disability, creed, religion, color, national origin, ancestry, marital or familial status, sexual orientation, or gender identity or expression, when making available such housing accommodations for sale, lease or rental. The rental of sleeping rooms in a private residence designed as a single dwelling unit in which the owner also resides is excluded from this section provided that the owner rents no more than three sleeping rooms within the residence.
- B. As used in this section, the terms set forth in this subsection shall have the meanings set forth in the Federal 1988 Fair Housing Amendments Act and shall include the following:
- (1) "Discrimination" means and includes:
- a. A refusal to permit, at the expense of the disabled person, reasonable modification of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises;
 - b. A refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or
 - c. In connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is thirty months after the date of enactment of the Fair Housing Amendments Act of 1988, a failure to design and construct those dwellings in such a manner that:
 - i. The public use and common use portions of such dwellings are readily accessible to and usable to disabled persons,

- ii. All the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs, and
 - iii. All premises within such dwelling contain the following features of adaptive design:
 - An accessible route into and through the dwelling,
 - Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations,
 - Reinforcements in bathroom walls to allow later installation of grab bars, and
 - Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space;
- (2) "Familial status" means having a child or children who live or will live with a person. A distinction based on familial status includes one that is based on the age of a child or children who live or will live with a person.
- (3) "Disability discrimination" means and includes:
- a. To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of:
 - i. That buyer or renter,
 - ii. A person residing in or intending to reside in that dwelling after it is sold, rented, or made available, or
 - iii. Any person associated with buyer or renter,
 - b. To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of:
 - i. That person, or
 - ii. A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available, or
 - iii. Any person associated with that person;
- (4). For purposes of this subsection "residential real estate related transaction" means any of the following:
- a. The making or purchasing of loans or providing other financial assistance:
 - i. For purchasing, constructing, improving, repairing, or maintaining a dwelling, or
 - ii. Secured by residential real estate,
 - b. The selling, brokering, or appraising of residential real property.

Section 13.

12.58.100 Exceptions. The mayor may grant exceptions to the provisions of Section 12.58.030 (B)(1) (pertaining to liability insurance requirement limits) and/or Section 12.58.030(B)(4) (pertaining to hours of event) taking into account the general public health, safety and welfare associated with the request for exception, as well as the liability risk and the applicant's ability to pay. When the mayor considers requests for exceptions, the mayor shall base the mayor's decision on the factual circumstances presented and decide the specific request on its merits and the mayor may not discriminate on the basis of actual or perceived (as defined in MMC 9.64.020) race, color, national origin, ancestry, religion, creed, political ideas, sex, age, marital or familial status, physical or mental disability, sexual orientation, or gender identity or expression, unless based on a bona fide liability risk, general welfare, health or safety reason(s).

Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The council hereby declares that it would have passed this ordinance and each section subsection, sentence, clause, phrase, and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or words have been declared invalid or

unconstitutional, and if for any reason this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.

PASSED by a 10 ayes, 2 nays, 0 abstentions, and 0 absent vote and

APPROVED on this 13th day of April, 2010.

ATTEST:

APPROVED:

/s/ Martha L. Rehbein
Martha L. Rehbein, CMC
City Clerk

/s/ John Engen
John Engen
Mayor

Provisions of Missoula Ordinance

Title 9.64.010 Purpose and Intent. It is the intent of the City of Missoula that no person shall be denied his or her civil rights or be discriminated against based upon his or her actual or perceived race, color, national origin, ancestry, religion, creed, sex, age, marital or familial status, physical or mental disability, sexual orientation, gender identity or expression.

Title 9.64.020 Definitions.

(2) "Discrimination," "discriminate," or "discriminatory" means any act, policy, or practice that has the effect of unfavorably subjecting any person to different or separate treatment on the basis of their actual or perceived race, color, national origin, ancestry, religion, creed, sex, age, marital or familial status, physical or mental disability, sexual orientation, gender identity or expression, or because of their association with a person or group of people so identified.

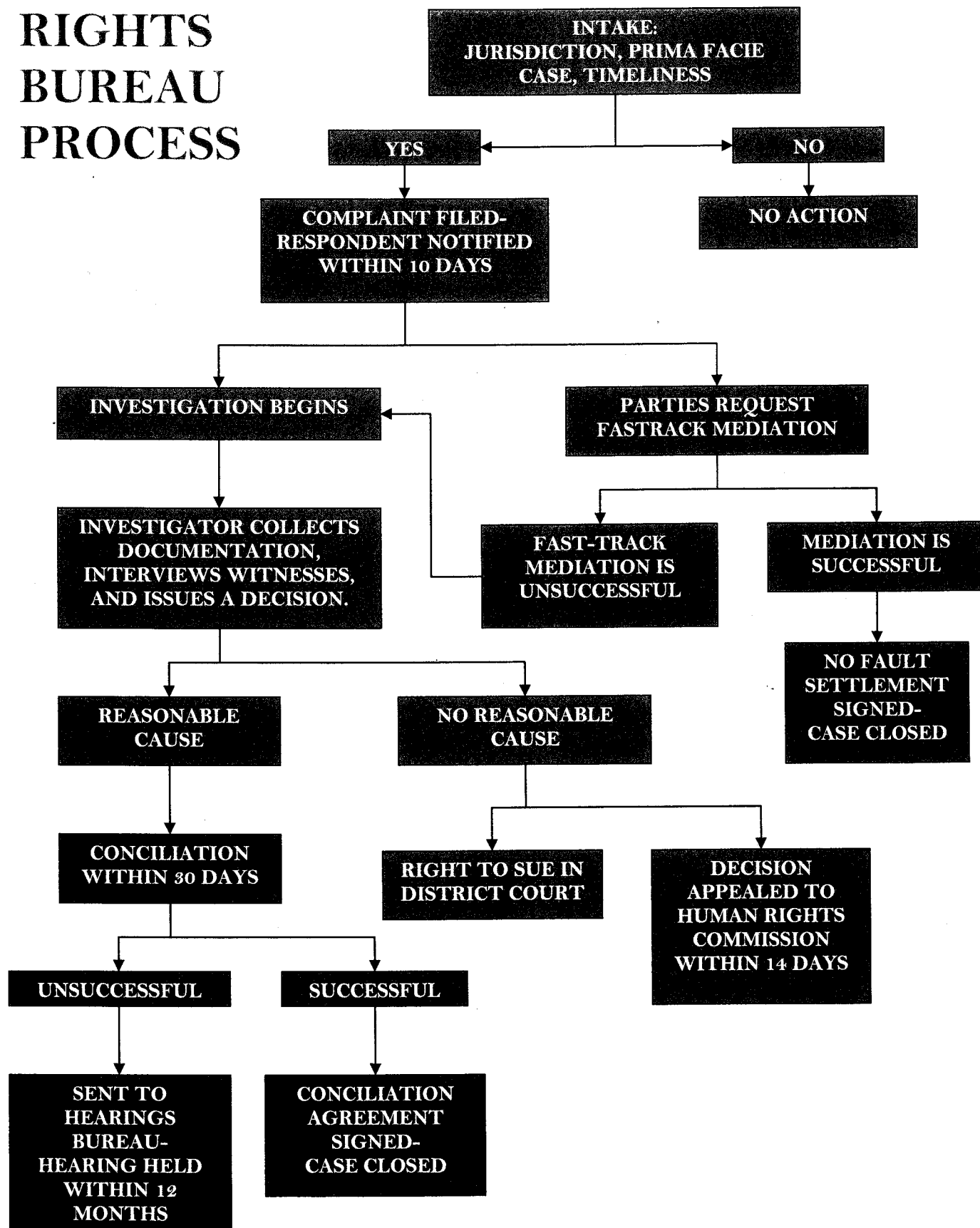
(8) "Gender identity or expression" means a gender-related identity expression, or behavior, regardless of the individual's sex at birth.

(12) "Perceived" refers to the perception of the actor, and not to the perception of the person for or against whom the action is taken.

(16) "Sexual orientation" means heterosexuality, bisexuality, or homosexuality.

[illegible]

HUMAN RIGHTS BUREAU PROCESS



A Guide to the Complaint Process
Montana Human Rights Bureau
P.O. Box 1728, Helena, MT 59624-1728
1-800-542-0807

The Montana Human Rights Bureau is a neutral administrative agency charged with enforcement of state laws prohibiting employment and other types of discrimination on the basis of sex, race, color, religion, national origin, age, disability, creed, political belief, familial status or marital status.

Initial Process

- Within ten (10) days of the filing of a complaint, we will send a copy of the complaint and documentation submitted with the complaint to the respondent. Within ten (10) business days of receipt of the complaint, the respondent must submit an initial answer.
- During this stage of the process, both parties have the right to request copies of any information related to the complaint, which has been filed in our office.

Fast- Track Mediation

- Within forty-five (45) days of the filing of the complaint, the case will be assigned to an investigator for further processing. Also, during this initial process, the parties may chose to voluntarily participate in fast-track mediation prior to the complaint being investigated.

Investigation

- The investigator will complete a neutral, informal investigation based on the information provided by both parties. Thus, it is in both parties' best interests to provide as much information to the investigation as possible.
- By law, investigations into complaints of discrimination must be completed within 180 days from the filing date. Within that time frame, the investigator will make a finding of **reasonable cause** or **no reasonable cause** based on the preponderance of evidence in the file.
- A finding of **reasonable cause** simply means that, based on the evidence provided, it appears more likely than not that discrimination occurred.
- A finding of **no reasonable cause** means that, based on the evidence provided, it appears more likely than not that discrimination did not occur. Complaints that receive a finding of **no reasonable cause** will be dismissed and the charging party will be advised of his/her right to file a civil action in district court or appeal the decision to the Human Rights Commission.

Conciliation

- If there has been a finding of reasonable cause, the case will go to conciliation in an effort to resolve the complaint prior to an administrative hearing. Any settlements reached at this stage must include additional affirmative relief, designed to eliminate the discriminatory practice identified in the finding.
- If settlement is not reached within thirty (30) days, we will certify the case for an administrative hearing.

Hearing

- If there has been a finding of reasonable cause and settlement has not been reached, a hearing examiner will conduct a formal hearing subject to the rules of evidence and civil procedure.
- Each party must present his/her own case through witness testimony and/or documentary evidence.
- The Hearing Examiner will issue a Final Agency Decision as to whether discrimination occurred and, if discrimination is found, will award appropriate damages.

Appeals to the Commission

- Within fourteen (14) days of any decision of the Human Rights Bureau or Hearing Examiner, either party may appeal the order to the Human Rights Commission, a five-member body appointed by the Governor to hear appeals of discrimination cases.
- The Human Rights Commission will hear the appeal within 120 days of the order and issue a decision within 90 days of hearing the appeal.

WHAT INVESTIGATORS WANT TO KNOW

Author: Mary Tapper

The Montana Department of Labor and Industry's Human Rights Bureau is a neutral administrative agency charged with enforcing the nondiscrimination laws of Montana. The Bureau accepts and investigates nearly 500 discrimination complaints per year.

The person filing a complaint is referred to as the "charging party". The business or entity against whom the complaint is filed is called the "respondent". In the event you file or respond to a complaint, here are some helpful tips to keep in mind:

1. **Consider Mediation.** Before the investigation, consider mediation. This allows for prompt resolution of the complaint, saving time and money for employees and employers. There is no cost to either party for mediation. No attorney is required for participation in mediation.
2. **Be responsive.** State what happened. Give the investigator enough information to understand the facts in contention. Provide the names of witnesses and witness statements early in the investigation when they are requested. With this information, the investigator can determine which witnesses have relevant information, who should be interviewed and then identify additional persons who may have information pertinent to the investigation.
3. **Be flexible.** By law, the Human Rights Bureau has 180 days to investigate a complaint of discrimination before preparing the final investigative report. Given the caseload each investigator handles, it is often not possible to plan interviews months in advance. Schedules are often difficult to coordinate, and cooperation is appreciated by investigators in both scheduling interviews and receiving responses to document requests in a timely fashion.
4. **Inquire.** Good communication is key to a thorough investigation. If you have concerns about what is requested or how to respond, or need an extension of time to prepare your response, call the investigator and ask.

The Human Rights Bureau attempts resolution of every case and conducts impartial investigations and issues determinations on the merits of the case. For additional information, including a process flow chart, training materials and timeline please visit www.montanadiscrimination.com.

HUMAN RIGHTS: A LAYERED FAIR AND OBJECTIVE PROCESS

Author: Marieke Beck

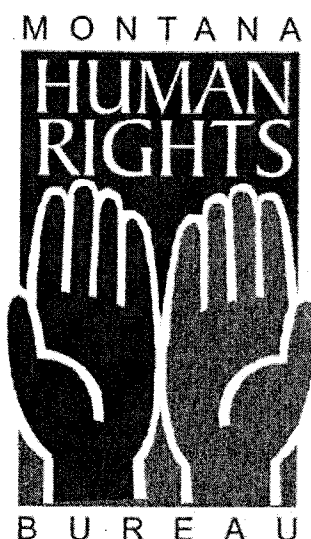
Navigating through the administrative process for a discrimination complaint can be complicated. The jargon is unfamiliar and there are three possible layers of review: the Human Rights Bureau, the Hearings Bureau and the Human Rights Commission. People often ask, why three levels? The quick answer is that the legislature wanted a fair and objective process. Multiple layers provide "checks and balances." Each level performs a separate and distinct function.

When first filed, a complaint is informally investigated by the **Human Rights Bureau** (HRB). An HRB investigator will talk to witnesses and gather information to determine if there is merit to a complaint. If HRB finds merit, the complaint will be kept inside the Department's administrative process. If HRB determines there is no merit, the complaint will be dismissed and a charging party can take his or her complaint into district court.

In cases where HRB finds merit, the complaint will travel on to the **Hearings Bureau**. At the hearings level, a Hearing Officer will conduct a contested-case proceeding. The parties will have a chance to conduct formal discovery, file motions, and present testimony. After the hearing, the Hearing Officer issues a ruling on whether there has been discrimination and, if appropriate, will order relief.

If a party is dissatisfied with either a decision of the Hearing Officer or with the Human Rights Bureau decision to dismiss the complaint, a party can appeal to the last layer of review, the **Human Rights Commission** (HRC), a five-member citizen panel appointed by the Governor. As the final step in the process, HRC reviews agency action and issues decisions. When HRC issues a Final Agency Decision, it can be appealed to a district court.

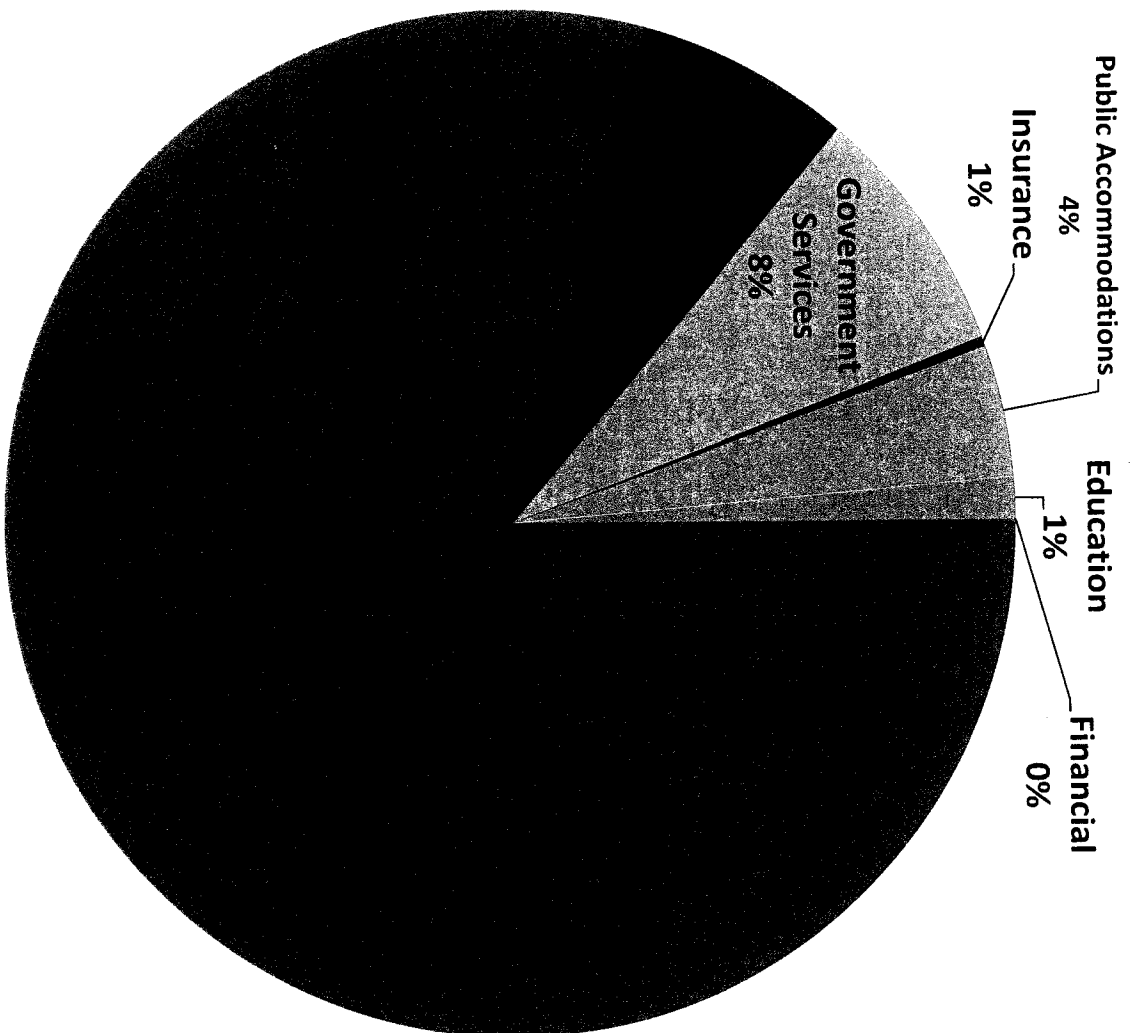
For more information please contact the Human Rights Bureau at 1-800-542-0807 or visit our website at <http://www.montanadiscrimination.com>.



Frequently Asked Questions
Proposed Missoula Anti-Discrimination Ordinance
4/12/2010

1. **Why does Missoula need the proposed ordinance if federal and state laws already have anti-discrimination protections?**
 - a. State and federal anti-discrimination protections do not include protections for sexual orientation and gender identity or expression. The proposed ordinance would extend anti-discrimination protections to lesbian, gay, bisexual, and transgender people. Twenty-one states, the District of Columbia, and at least 129 cities and counties have taken similar action.
2. **Will the proposed ordinance give preferential treatment to lesbian, gay, bisexual, and transgender individuals?**
 - a. No. The proposed ordinance will prohibit discriminating against individuals because of their sexual orientations and gender identities or expressions. The proposed ordinance will create a mechanism for redress if individuals feel that they have been discriminated against based on their sexual orientations and/or gender identities or expressions. Individuals will be able to make complaints and engage in a process of fact-finding that would prove or disprove an individual's claim of discrimination.
3. **What does gender identity or expression mean?**
 - a. Gender identity describes how people perceive their own internal sense of maleness or femaleness. Gender expression is the physical manifestation of one's gender identity, usually expressed through clothing, mannerisms, and chosen names.
4. **Does the proposed ordinance force churches to engage in activities that are contrary to their religious doctrine or beliefs?**
 - a. No. The proposed ordinance does not have any effect on the Constitutionally protected exercise of religion. Churches and other religious institutions will be exempt from this ordinance when engaging in the practice of their religion or in activities that are for a religious purpose.
5. **Does the proposed ordinance address "gender confused?"**
 - a. No.
6. **What does transgender mean?**
 - a. Transgender is when a person's self-identified gender is different from the gender assigned at birth.
7. **Does the proposed ordinance change access to public restrooms?**
 - a. No. The ordinance prohibits discrimination in public accommodations. This means that if people feel they are denied access to public restrooms based on their sexual orientations and/or gender identities or expressions, they could make complaints and engage in a process of fact-finding that would prove or disprove their claims of discrimination.
8. **Does this ordinance prohibit gender-segregated public restrooms?**

- a. No. The proposed ordinance does not require any changes to gender-segregated public restrooms. This ordinance does require that individuals are permitted to access restrooms or locker rooms in accordance with their gender identity, rather than their assigned sex at birth. And, just as non-transgender individuals are entitled to use a restroom appropriate to their gender identity without having to provide documentation or respond to invasive requests, transgender individuals must also be allowed to use a gender-identity appropriate restroom without being harassed.
- 9. Does the proposed ordinance change access to locker rooms?**
- a. No. The ordinance prohibits discrimination in public accommodations. This means if someone feels that he or she is denied access to a public locker room based on sexual orientation and/or gender identity or expression, he or she could make a complaint and engage in a process of fact-finding that would prove or disprove the individual's claim of discrimination.
- 10. Does the proposed ordinance force public schools to change their policies around restrooms and locker rooms?**
- a. No. The Montana Code Annotated at MCA 7-1-111 (3) expressly denies local governments the power to regulate on matters relating to or affecting public schools. The proposed ordinance will have no effect on Missoula public schools.
- 11. Does the proposed ordinance give individuals the right to engage in criminal activities in public restrooms or locker rooms?**
- a. No. The proposed ordinance does not change criminal laws (local, state, or federal). Nothing in the proposed ordinance permits or requires access to any place of public accommodation for the purpose or intent of engaging in criminal conduct.
- 12. Do I currently have the right to refuse to rent to someone if I don't approve of something about them?**
- a. Only in a narrow set of circumstances. Landlords are engaging in the public marketplace and in doing so are subject to both state and federal anti-discrimination laws. While landlords retain the right to make reasonable requirements with respect to references and credit, they may not make rental decisions based on actual or perceived race, religion, sex, marital or familial status, color, national origin, ancestry, creed, physical or mental disability, or age. The proposed ordinance adds sexual orientation and gender identity or expression to the list of groups protected. Additionally, according to the Montana Code Annotated, the rental of sleeping rooms in a private residence designed as a single dwelling unit in which the owner also resides may rent to whomever they choose, provided that the owner rents no more than three sleeping rooms within the residence.



AREA OF ALLEGED DISCRIMINATION FISCAL YEAR 2010
(JULY 1, 2009 - JUNE 30, 2010)